

**Exhibit 87 to the Cobb Declaration**  
**(Dkt. No. 316-3)**

**REDACTED**

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE WESTERN DISTRICT OF WASHINGTON  
4 AT SEATTLE

5  
6 IN RE VALVE ANTITRUST LITIGATION

7  
8 Case No. 2:21-cv-00563-JCC  
9

10  
11 April 18, 2024  
12 9:08 a.m.

13  
14 \*\*\* HIGHLY CONFIDENTIAL --  
15 ATTORNEYS' EYES ONLY \*\*\*  
16

17 DEPOSITION of STEVEN SCHWARTZ,  
18 pursuant to Notice, held at the offices of  
19 MONTGOMERY, MCCracken, WALKER & RHOADS  
20 LLP, 437 Madison Avenue, New York, New  
21 York before Wayne Hock, a Notary Public of  
22 the State of New York.  
23  
24  
25

1 S. Schwartz - HIGHLY CONFIDENTIAL - AEO  
2 paragraphs three hundred seventy to three  
3 hundred seventy-six of your report;  
4 correct?

5 A. Yes.

6 Q. Do you believe that every game  
7 developer with a successful game is likely  
8 to develop a successful platform?

9 A. I think in a market unencumbered  
10 by the PMFN that Valve imposes would view  
11 self-distribution or third-party  
12 distribution as a viable option and, as a  
13 result, there would be more competing  
14 platforms in the marketplace and that the  
15 impact of that both on consumers and on  
16 developers would be lower commissions and  
17 lower game prices. The but-for world  
18 presumes that there would be more  
19 competition. It is likely that some of  
20 the competitors who went off and tried to  
21 build their own successful first-party  
22 distribution outlet would have done so in  
23 the but-for world and would have had  
24 greater success. And as I say in the  
25 report, it's likely that some of the

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2 publishers or distributors who tried to  
3 set up a third-party distribution platform  
4 and failed would have had greater success  
5 had they not faced the restraints imposed  
6 by the PMFN.

7 Q. Would you agree with me that  
8 some game developers with successful games  
9 never attempt to develop a platform of  
10 their own?

11 THE WITNESS: Repeat that for me,  
12 please?

13 (Whereupon the requested portion  
14 was read back by the reporter)

15 THE WITNESS: I would agree that  
16 not all of them develop a platform. I  
17 don't know what they do by way of  
18 consideration or attempt or  
19 development of business plans or any  
20 of those things. But I would agree  
21 with you that not all of them do  
22 develop.

23 And again, when we get to the  
24 end of the line, a good stopping  
25 point, if we could take a break.

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2 Q. Let's go on for another five or  
3 ten minutes, if that's okay.

4 Do you have a method to predict  
5 which successful game developers will, in  
6 your view, create a successful platform in  
7 the but-for world and which ones won't?

8 A. No, and I don't need to. What I  
9 need to know is that there is going to be  
10 increased competition, and as a result of  
11 that increased competition from these  
12 additional third-party distribution  
13 platforms, Valve will be compelled by  
14 competitive pressure to compete on price  
15 with developers and will lower the  
16 commission rate, and vault of the lower  
17 commission rate, game prices will be  
18 reduced and both consumers and developers  
19 will benefit and there will be robust  
20 competition.

21 Q. Do you believe that in the  
22 but-for world, [REDACTED] will operate a platform  
23 with a market share of [REDACTED] percent  
24 between 2017 and 2021?

25 A. I don't know and I don't need to

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2 know. It doesn't -- what I need to know  
3 is what the but-for -- approximate but-for  
4 market share is for Valve who comprises  
5 the remaining roughly [REDACTED] percent  
6 of the market and how that's distributed  
7 across the various platforms is not an  
8 essential element of my analysis. What is  
9 important is to get an estimate of the  
10 approximate size of Valve within the  
11 marketplace and understand that the  
12 elimination of the PMFN is going to lead  
13 to entry, effective entry, competition,  
14 and a greater number of platforms in the  
15 marketplace. But it's not necessary for  
16 me to know who those are and what each  
17 specific platform's share would be.

18 Q. So you're saying, for example,  
19 that [REDACTED] share could be higher than [REDACTED]  
20 percent and [REDACTED] share could be  
21 lower than [REDACTED] percent?

22 A. What I'm saying is that there  
23 will be other platforms that will comprise  
24 the [REDACTED] percent of the rest of the  
25 market. Whether it is comprised of [REDACTED]

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2 [REDACTED] [REDACTED] [REDACTED] [REDACTED],  
3 [REDACTED] [REDACTED], and [REDACTED] only, whether it  
4 will be some subset of this group plus  
5 others who may have entered and failed or  
6 thought about entering and chose not to is  
7 not what is important. What is important  
8 is the estimate of the approximately [REDACTED]  
9 percent market share. That's what flows  
10 through to the damages analysis.

11 Q. Will [REDACTED] market share be  
12 approximately [REDACTED] percent in the but-for  
13 world?

14 A. I'll give you the same answer  
15 that I just gave: I don't know and it  
16 doesn't matter. What matters is the [REDACTED]  
17 percent for Valve. How the remaining [REDACTED]  
18 percent is distributed among competing  
19 platforms is not something that I need to  
20 determine, it's not necessary as a part of  
21 my analysis for the damages analysis, so  
22 it's not something that I need to analyze  
23 or predict.

24 Q. How are you able to predict  
25 Valve's share at [REDACTED] percent when you're

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2 not able to predict [REDACTED] share at  
3 16.4 percent?

4 A. Because what I'm saying is that,  
5 within this more competitive market,  
6 Valve's share will be about [REDACTED]  
7 percent, [REDACTED] percent. How the  
8 remaining share is divided up and among  
9 whom isn't important. I don't need to  
10 know that for my damages analysis. What I  
11 need to know for my damages analysis is  
12 what Valve's but-for share would be. Who  
13 comprises or takes up the remaining [REDACTED]  
14 percent doesn't matter for purposes of the  
15 damages calculation.

16 Q. But the basis for your  
17 estimating the market share of every one  
18 of these companies on figure six is the  
19 Steam revenue that those companies  
20 generated that's listed in figure six;  
21 correct?

22 A. Yes.

23 Q. So your basis for predicting the  
24 revenue share in column three of figure  
25 six is exactly the same for Valve as it is



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2 for every other company on that list;  
3 correct?

4 A. I'm sorry, repeat that for me?  
5 I'm not sure I understood that.

6 Q. Yes.

7 The revenue shares that you  
8 derive in figure six in the right-hand  
9 column, [REDACTED] Valve, [REDACTED] for [REDACTED]  
10 those are all simply derived by comparing  
11 the Steam revenue that's listed in the  
12 Steam revenue chart on figure six;  
13 correct?

14 A. It is based on the revenue from  
15 the Steam platform on the sale of the  
16 games during this period and -- during  
17 this five-year period, and that's the best  
18 predictor we have for what Valve's market  
19 share would be in a but-for world. That's  
20 the only parameter I need for the damages  
21 analysis.

22 The specifics about how the  
23 remaining share is divided up in the  
24 but-for world is not something that I need  
25 for my damages analysis or any other part

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2 of my analysis.

3 Q. Your basis for thinking that  
4 Steam will have a [REDACTED] percent revenue  
5 share in the but-for world is because its  
6 sales on figure six between January, 2008  
7 and December, 2012 was [REDACTED] [sic]  
8 [REDACTED]; correct?

9 A. [REDACTED]  
10 [REDACTED]

11 Q. I'm sorry.

12 Let me rephrase that.

13 Your basis for thinking that  
14 Steam's revenue share of [REDACTED] percent will  
15 be because Valve's sales of its own games  
16 on Steam between January, 2008 and  
17 December, 2012 were [REDACTED]; correct?

18 THE WITNESS: Read that one back  
19 to me again, please.

20 (Whereupon the requested portion  
21 was read back by the reporter)

22 THE WITNESS: I would agree  
23 that's how the calculation is done.

24 Q. Your basis for thinking that  
25 [REDACTED] share of [REDACTED] percent is because

1       S. Schwartz - HIGHLY CONFIDENTIAL - AEO  
2       Valve serves is simply to facilitate that  
3       transaction. That's the economics of the  
4       transaction.

5           Q.       As you see it?

6           A.       No, it's not as I see it, that's  
7       objectively the economics of the  
8       transaction. You can argue about perhaps  
9       other perhaps if you like, but the  
10      economics of the transaction, no, that's  
11      -- that is objectively what the economics  
12      of the transaction are.

13          Q.       And does Valve have  
14      responsibility to fulfill that  
15      transaction, to supply the game? It does;  
16      doesn't it?

17          A.       They have obligations to both  
18      sides. That's their role as the platform,  
19      to facilitate that transaction.

20          Q.       And Valve has responsibility to  
21      the user continually, as we discussed  
22      before, that can go on for years in  
23      connection with that transaction; right?

24                   MR. LERAY: I object to form.

25                   Go ahead.

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2 THE WITNESS: They have  
3 responsibility to continue to provide  
4 a platform on which the item that the  
5 user has purchased from the developer  
6 to allow them to use that game.

7 Q. And that's more than just being  
8 an agent for a publisher; isn't it?

9 A. I never used the term "agent",  
10 you did. I said their role is to  
11 facilitate the transaction and they get  
12 paid for the value that they provide.  
13 That's their only revenue. That other  
14 revenue belongs -- from the moment of the  
15 transaction, that other revenue belongs to  
16 the publisher.

17 Q. This is your accounting opinion?

18 A. No, that's the economics of it,  
19 that's the economics of it.

20 MR. CASPER: Could we have tab  
21 thirty, please. And this will be  
22 number ten.

23 (Whereupon, a document entitled  
24 Consolidated Financial Statement of  
25 the [REDACTED] For 2022

1 S. Schwartz - HIGHLY CONFIDENTIAL - AEO  
2 was marked Schwartz Exhibit 10  
3 for identification.)

4 MR. LERAY: I think we're at the  
5 five-minute warning.

6 MR. CASPER: How much time is  
7 left on the record?

8 THE VIDEOGRAPHER: Four minutes.

9 Q. I'm going to show you what's  
10 been marked as Exhibit 10. And this is  
11 the consolidated financial statement for  
12 the [REDACTED] [REDACTED] [REDACTED] for 2022. And again,  
13 I'm going to point you to one page of  
14 this, which is page twenty-four.

15 A. (Reviewing).

16 Q. And do you see the section that  
17 says "revenue and operating expenses" on  
18 page twenty-four?

19 A. I do.

20 Q. And if you would look at the  
21 one, two, three, four, fifth paragraph  
22 that begins, "as part of its operations".

23 Do you see that?

24 A. I do.

25 Q. Could you read that to yourself,

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2 please.

3 A. (Reviewing).

4 Okay.

5 Q. Would you agree with me that the  
6 operator of [REDACTED], which is a gaming  
7 platform; correct?

8 A. Yes.

9 Q. That [REDACTED], which operates  
10 [REDACTED], has concluded, for financial  
11 reporting purposes, that [REDACTED]  
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
13 [REDACTED]

14 Is that true?

15 A. I would agree that's what it  
16 says.

17 Q. Do you think that that flouts  
18 economics?

19 MR. LERAY: I object to form.

20 THE WITNESS: I don't have an  
21 opinion whether I agree or disagree  
22 with that assessment, and I don't have  
23 an opinion as to whether it flouts  
24 economics.

25 I do agree or I would state

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2 without question the way in which  
3 Valve presented the financials in  
4 connection with this case distorts the  
5 underlying economics of the  
6 transaction and suggests that its  
7 [REDACTED] [REDACTED] [REDACTED] than they are, which  
8 is belied by all of the information in  
9 the record about just how [REDACTED]  
10 [REDACTED] the company is. And the  
11 approach that they take distorts the  
12 profitability through an accounting  
13 when it claims -- what I suspect it  
14 will claim is an accounting convention  
15 and it distorts the profitability to  
16 make it lower than in other places  
17 that it freely admits that it is. And  
18 the reason for that is because it  
19 doesn't reflect that is actually  
20 happening in the transaction as  
21 opposed to some set of accounting  
22 procedures that it applies for  
23 purposes of putting together the P&Ls  
24 for purposes of this case.

25 MR. CASPER: Well, I guess we're

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2 out of time.

3 And I have no further questions.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: The time is  
6 6:21 p.m., and we're going off the  
7 record.

8 (TIME NOTED: 6:21 p.m.)

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1 IN RE VALVE ANTITRUST LITIGATION

2 4/18/2024 - STEVEN SCHWARTZ

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, STEVEN SCHWARTZ, do hereby declare  
5 that I have read the foregoing transcript,  
6 I have made any corrections, additions, or  
7 changes I deemed necessary as noted on the  
8 Errata to be appended hereto, and that the  
9 same is a true, correct and complete  
10 transcript of the testimony given by me.

11  
12 \_\_\_\_\_  
13 STEVEN SCHWARTZ

\_\_\_\_\_  
Date

14 \*If notary is required

15  
16 SUBSCRIBED AND SWORN TO BEFORE ME THIS  
17 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

18  
19  
20 \_\_\_\_\_  
21 NOTARY PUBLIC  
22  
23  
24  
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\* \* \*

## I N D E X

WITNESS	EXAMINED BY	PAGE
S. Schwartz	Mr. Casper	6

## E X H I B I T S

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